IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 7523 OF 2002

Eknath Patalu Kanase ...Petitioner

Versus

Rahimatpur Vividh Karyakari Sahakari Society Ltd. & Ors. ...Respondents

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Mr. V.M. Joshi, counsel for Petitioner

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CORAM: B. H. MARLAPALLE, J.

DATED: 1ST APRIL, 2005

P. C.:-

1. Heard Mr. Joshi, the learned counsel for the petitioner.

2. The present respondent Society had instituted dispute No. 37 of 1982 before the Co-operative Court at Satara for recovery of Rs.67,903.32/- against the present petitioner and the respondent No.2. The petitioner was the employee of the society (Secretary) whereas the respondent No.2 was the Chairman of the disputant Society. The Co-operative Court vide its judgment and order dated 29.8.1994 dismissed the dispute. It held that the dispute was not barred but the present petitioner was not guilty of committing any misappropriation. This decision

was carried in appeal No.276 of 1994 by the Society. The learned President of the Maharashtra State Co-operative Appellate Court was pleased to partly allow the appeal vide his judgment and order dated 11.2.2002. The appeal was dismissed against the present respondent No.2. The petitioner is aggrieved by the order passed by the lower Appellate Court allowing the appeal against him and holding him responsible for causing loss to the disputant society to the amount of Rs.22,271.71.

3. Pursuant to the order dated 28.2.2005, Record and Proceedings has been received from the Court below. Mr. Joshi, submitted that there was no evidence pointing out that the difference of Rs.22,271.71 in terms of the alleged misappropriation could be attributed to the present petitioner and the lower appellate Court was not justified in reversing the findings recorded by the Co-operative Court. The dispute was filed belatedly and the evidence relied upon by the lower appellate Court of Mr. Ghadge, the then Secretary of the Society and Mr Dixit, an Auditor who submitted the report and which has formed the basis of alleged recovery, was rightly examined by the Co-operative Court for recording the findings that the misappropriation, if any, could not be attributed.

4. It is well established that the lower appellate Court has the powers to re-appreciate the evidence on record and the said exercise has been rightly done in the instant case. The theory of collusion between the petitioner and the respondent no.2 could not be supported by the evidence on record and therefore, the learned advocate for the appellant had conceded on this point. On this count, the lower appellate Court held that the respondent No.2 who was the Chairman could not be held to be a sharer in the misappropriation. There is no dispute that the petitioner was full time employee of the society who was responsible for the day to day affairs of the said society. The lower appellate court considered the evidence of Mr. Ghadge and Mr Dixit, the Audit report and Tally Patrak (Balance Sheet), it was noted that the amount of Rs.33,372/- was shown to have been sent to the Sangh during the relevant period but the Manager of the Sangh stated that during that period it had received only Rs.11,101/-, on the basis of the record produced by him. Thus, there was a difference of Rs.22,271.71/-. These three witnesses i.e. Mr. Ghadge, Mr. Dixit and the Manager of the Sangh, were the material witnesses and the petitioner did not step in the witness box nor did he examine any other witness in his defence. The record of the Co-operative Court has been placed before me and the documents relevant are Exh. 49 to 52 in addition to

the Pass Book of the society which is at Exh.08, the findings recorded by the lower appellate Court attributing/connecting the misappropriation to the present petitioner, are based on the documents exhibited before the Co-operative Court. The petitioner being the full time employee of the disputant society at the relevant time, it was necessary for him to adduce the evidence to prove his innocence and more particularly on the basis of the documents referred to hereinabove. All three witnesses have been cross examined on his behalf. At Exh.50 the entries were recorded in the hand writing of the petitioner which was not disputed.

5. Under the circumstances, re-appreciation of evidence undertaken by the lower appellate Court and the reasoning recorded on that basis in support of the impugned judgment cannot be faulted with and it cannot be termed as perverse or patently erroneous.

6. Hence, the petition is rejected summarily.